

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0747
Sales and Use Tax
For Tax Periods: 1995, 1996, and 1997

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ISSUE

I. Sales Tax Adjustment – Sales Tax Assessed on Unitary Transactions:
 Engraving Services.

Authority: IC 6-2.5-1-1(a); IC 6-2.5-1-2(a); IC 6-2.5-1-2(b); IC 6-2.5-2-1; IC 6-2.5-2-1(a); IC 6-2.5-2-1(b); IC 6-2.5-4-1(b); IC 6-2.5-4-1(e); 45 IAC 2.2-4-1; 45 IAC 2.2-4-1(b); Cowden & Sons Trucking, Inc. v. Indiana Dept. of State Revenue, 575 N.E.2d 718 (Ind. Tax Ct. 1991); Indiana Dept. of State Revenue v. Martin Marietta Corp., 398 N.E.2d 1313 (Ind. Ct. App. 1979).

Taxpayer protests the imposition of sales tax on that portion of taxpayer's customer invoices attributable to the cost of engraving services.

STATEMENT OF FACTS

Taxpayer is a retailer of engraved trophies, plaques, and sports memorabilia display cases. In association with the sale of those items, the taxpayer provides engraving services. Taxpayer also provides engraving services for customer owned items.

I. Sales Tax Adjustment – Sales Tax Assessed on Unitary Transactions:
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The taxpayer protests the assessment of the gross retail tax on that portion of customer invoices attributable to engraving charges. It had been the practice of the taxpayer to list on customer invoices the cost of the trophy (or other item to be engraved) separately from the cost of the engraving and to charge sales tax only for the cost of the trophy. The audit disagreed with the taxpayer's methodology and proposed an additional assessment of gross retail tax on the engraving charges pursuant to 45 IAC 2.2-4-1(b). The audit characterized taxpayer's sales of trophies and engraving services as unitary transactions entirely subject to sales tax. In rebuttal, the taxpayer cites Cowden & Sons Trucking, Inc. v. Indiana Dept. of State Revenue, 575 N.E.2d 718 (Ind. Tax Ct. 1991) for the

proposition that the Indiana legislature intended to tax services rendered in a retail unitary transaction only if the transfer of property and rendition of services is inextricable and indivisible. Therefore, according to taxpayer, because the taxpayer's invoices separately stated charges for the cost of the tangible personal property and engraving services, the two costs are demonstrably neither inextricable nor indivisible. Alternatively, the taxpayer requests that the Department apply the audit's determination, that engraving services are subject to sales tax, prospectively. Although taxpayer has agreed to begin charging sales tax for engraving services, the taxpayer has requested that the sales tax assessment for engraving charges made during 1995, 1996, and 1997 be waived. Taxpayer predicates this request on its purported good faith application of the tax law prior to the audit and because the audit's assessment is allegedly based on an attenuated interpretation of a "gray" area of the law.

The Indiana state gross retail tax "is imposed on retail transactions made in Indiana." IC 6-2.5-2-1(a). The term "retail transaction" is defined as a "transaction of a retail merchant that constitutes selling at retail as described in IC 6-2.5-4-2, or that is described in any other section of IC 6-2.5-4" IC 6-2.5-1-2(a). "Selling at retail" is defined in IC 6-2.5-4-1(b).

A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he: (1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration. IC 6-2.5-4-1(b).

Since the sales and use tax statutes expressly state that the transfer of tangible personal property is taxable, by implication the transfer of services is not taxable. However, services are taxable if the services comprise a part of a unitary transaction that is also a retail transaction. IC 6-2.5-1-2(a). IC 6-2.5-4-1(e) states that "[t]he gross retail income received from selling at retail is only taxable . . . to the extent that the income represents: (1) the price of the property transferred, without the rendition of any service; and (2) . . . any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery or *other service performed in respect to the property transferred before its transfer* and which are separately stated on the transferor's records." (Emphasis added).

Under 45 IAC 2.2-4-1 which states, "[w]here ownership of tangible personal property is transferred for a consideration, it will be considered a transaction of a retail merchant constituting selling at retail unless the seller is not acting as a 'retail merchant.' (b) All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to (1) The price arrived at between purchaser and seller. (2) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or *other services performed in respect to or labor charges for work done with respect to such property prior to its transfer*. (3) No deduction from gross receipts is permitted for services performed or work done on behalf of the seller *prior to transfer of such property at retail*." (Emphasis added).

The audit correctly determined that taxpayer's engraving charges are subject to the Indiana gross retail tax. Taxpayer is a retail merchant making retail transactions consisting of the transfer of tangible personal property for which the engraving is a tangential yet inseparable element. When the taxpayer delivers a completed trophy to one of its customers, taxpayer delivers a complete "package" having a unique and indivisible value to that customer. Under 45 IAC 2.2-4-1, when tangible personal property is sold at retail, all the elements of the price are subject to sales tax including any additional charges for services performed, with respect to that property, prior to the transfer of the property.

Taxpayer's reliance on Cowden, 575 N.E.2d 718 is misplaced. In Cowden, there was every indication that the customers bargained for delivery and the sale of the stone separately. Unlike the Cowden transactions, taxpayer performed services prior to the transfer of the personal property.

Indiana imposes on retail merchants the responsibility for collecting the state gross retail tax. IC 6-2.5-2-1. Under that statute, the taxpayer is charged with the duty to "collect the tax as an agent for the state." IC 6-2.5-2-1(b). The Department of Revenue lacks the authority to waive this statutory responsibility and, therefore, taxpayer's request for prospective treatment of the tax assessment must be denied.

FINDING

Taxpayer's protest is respectfully denied.